THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 02.07.2007

CRL. REV. P. 695/2002

BALDEV RAJ ...Petitioner

- versus -

CHANDER PRAKASH & ORS. ...Respondents

Advocates who appeared in this case:
For the Petitioner : Mr P. R. Thakur
For the Respondent : Mr R. K. Naseem with Mr Manu Sharma and Mr Sanjay K. Manan

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J

1. This criminal revision petition has been filed by Mr Baldev Raj against an order of acquittal passed by the learned Additional Sessions Judge on 06.07.2002, whereby the respondents have been acquitted of the offences under Section 498A and 304 B IPC. The petitioner (Mr Baldev Raj) is the father of the deceased Kavita, who died on 06.07.1993 as a result of a fall from the fourth floor of her matrimonial home. Late Kavita was married to the respondent No.1 (Chander Prakash) on 02.02.1989. They had a girl child of

about 3-1/2 years of age at the time of Kavita's demise. The respondent Nos. 2, 3 and 4 are the brothers-in-law of late Kavita. The respondent No. 5 (Gulshan Rani) is Kavita's mother-in-law. It is relevant to point out that no appeal was preferred against the order of acquittal by the Government of NCT of Delhi. Since the petitioner is aggrieved and he has no recourse to file an appeal, the present criminal revision petition has been filed by him.

2. The case against the respondents emanates from FIR No. 377/1993 registered at Police Station Paschim Vihar, under Sections 498A / 302B IPC. The prosecution case was that late Kavita, daughter of the present petitioner Baldev Raj and Smt. Varsha Rani, married Chander Prakash on 02.02.1989. The couple started living together, firstly, at A-6, Pink Apartments and later at A-45, Pink Apartments, Paschim Vihar, Delhi. Late Smt. Kavita died an unnatural death in the night intervening 5th and 6th July, 1993 at her matrimonial house. The police had received information through an unknown person with regard to the death of Smt. Kavita. The same was recorded in DD No. 30-A at about 4.45 am on 06.07.1993. When the police officials arrived at the scene of the incident, that is, house No. A-45, Pink Apartments, Paschim Vihar, they found the body of late Smt. Kavita on a cot on the ground floor. The parents of the deceased and the family members of her in-laws were also present. The statements of the parents of late Smt. Kavita, namely, Smt. Varsha Rani and Mr Baldev Raj (the petitioner herein) were recorded by the Sub-

Divisional Magistrate. The statement of Smt. Varsha Rani was treated as the complaint and the SDM directed the Station House Officer of Police Station Paschim Vihar to register the case and investigate the matter.

3. As per the statement of Smt. Varsha Rani, recorded by the SDM, Kavita and Chander Prakash, after their marriage on 02.02.1989, lived at A-6, Pink Apartments for about 1-1/2 years. Thereafter, they shifted to A-45, Pink Apartments, Paschim Vihar along with other family members of Chander Prakash. It was alleged that Kavita and Chander Prakash used to quarrel / dispute on account of domestic matters. It was also alleged that Chander Prakash used to consume liquor and then used to beat Kavita. It was also stated that about 15 days prior to the making of the statement before the SDM, Chander Prakash had beaten Kavita and she (Kavita) had come to her parents' house at B-3/279, Paschim Vihar. It was stated that Smt. Varsha Rani and Baldev Raj pacified her and after one day Kavita returned to her matrimonial home. At about 4 am on 06.07.1993, Smt. Varsha Rani and Baldev Raj received information that Kavita had jumped from the house and had died. Both Smt. Varsha Rani and Baldev Raj rushed to the house of Chander Prakash and found that Kavita was lying dead. There, they came to know from the people that on the previous night also, Chander Prakash had quarreled with Kavita and had beaten her and at that time his three brothers and mother were present in the house. It was also stated before the SDM by Smt. Varsha Rani

that Chander Prakash used to tell Kavita's parents that other people got lots of things in their marriages but what had her parents given in her marriage. It was stated by Smt. Varsha Rani that her daughter Kavita died due to the taunts and harassment. Sh. Baldev Raj also made a statement before the SDM which was more or less identical to the statement given by his wife Smt. Varsha Rani.

4. On the conduct of the post mortem on Kavita's body, six external injuries comprising of abrasions and fractures were noted. The opinion of the doctor conducting the post mortem was that all the injuries were ante mortem and were caused by blunt force impact as a result of a fall from a height. The death was due to shock and haemorrhage consequent to injuries.

5. It was also the case of the prosecution that in the evening of 06.07.1993 Ms Amita, sister of the deceased Kavita, and Sh. Ashok Dandona, uncle of the deceased Kavita, visited the office of the SDM and made their statements. In those statements allegations of demand of dowry and harassment to Kavita on account of such demands were made. As per the prosecution Sh. Baldev Raj, appeared once more before the SDM on 09.07.1993 and made another statement to allege instances of demand of dowry and harassment to Kavita on that account.

6. After completion of investigations and filing of the charge-sheet, the Court framed charges on 05.01.1994 against the respondents, who were all accused, for committing offences under Section 498-A and 304 B IPC. The prosecution examined 20 witnesses. However, the relevant witnesses are PWs 1-3 and PW5. PW1 Smt. Varsha Rani and PW2 Baldev Raj are the parents of the deceased Kavita. PW3, Sh. Ashok Dandona is the uncle of the deceased. PW5 Ms Amita, Kavita's sister, during her deposition was declared hostile and was thereafter cross-examined by the prosecution. This is a very relevant and important circumstance. Another fact that is of great significance is that PW5 Amita married the accused / respondent No.1 Chander Prakash on 08.11.1994, during the pendency of the trial. It is indeed an unusual circumstance that the sister of a deceased has married her sister's widower, when there is a criminal case pending against him with regard to cruelty, harassment and commission of a dowry death in respect of her sister. It appears that the factum of such a marriage between Ms Amita and Chander Prakash has gone a long way in persuading the learned Additional Sessions Judge to return a finding of acquittal in favour of the accused / respondents.

7. After examining the evidence in detail and in particular the evidence led by PW1, PW2, PW3 and PW5, the learned Additional Sessions Judge came to the conclusion that the prosecution has not been able to establish the case either under Section 304 B or Section 498-A IPC. Accordingly, they

were all granted the benefit of doubt and, although the exact cause of the unnatural death of Kavita had not come on record, all the respondents were acquitted for the offences under Section 498-A and Section 304 B IPC.

8. Mr Thakur, who appeared on behalf of the petitioner, submitted that this was a fit case in which this Court ought to interfere in revision against an acquittal. He submitted that even if the Court had found that a case under Section 304 B IPC had not been made out, it could very well, on the basis of evidence on record, convict the accused under Section 306 IPC for abetment to commit suicide read with Section 113-A of the Indian Evidence Act, 1872 as also under Section 498A IPC. He submitted that there was enough material on record to suggest that Kavita "jumped" of the roof of the fourth floor of her matrimonial home. Therefore, it was a clear case of suicide. That being the position, the presumption under Section 113-A of the Indian Evidence Act, 1872 ought to have been drawn by the court concerned. He also submitted that since cruelty was established, the respondents ought to have been found guilty under Section 498 A IPC. In support of his contentions, Mr Thakur relied upon the following decisions:-

(i) ***Devinder Singh & Ors. v. State of Punjab: 2005 (3) JCC 1725*** (SC);

(ii) ***Shamnsaheb M. Multtani v. State of Karnataka: 2001 Crl. L. J. 1075*** (SC);

(iii) ***K. Prema S. Rao and Another v. Yadla Srinivasa Rao and Others: JT 2002(8) SC 502***

(iv) ***Hira Lal & Ors. v. State (Govt. of NCT) Delhi: 2003 (5) Supreme 112*;**

(v) ***Gurbachan Singh v. Satpal Singh and Others: AIR 1990 SC 209*** and

(vi) ***Naresh Kumar and Another v. State of Haryana: 1994 SCC (Crl.) 502.***

9. Mr Thakur submitted that he was well aware of the limited and restricted powers that this Court possessed in entertaining an application by a private party seeking revision of an order of acquittal. He submitted that under Section 401 (3) of the Code of Criminal Procedure, 1973, it is clear that in exceptional circumstances, though the court cannot convert an acquittal into a conviction, it can remit the matter for re-trial. He submits that the present case falls within the parameters prescribed for exercise of such revisional jurisdiction. To explain the extent of the powers exercisable by this Court, he referred to the following decisions of the Supreme Court:-

(i) ***Vimal Singh v. Khuman Singh and Another: 1998 SCC (Cri) 1574;***

(ii) ***K. Chinnaswamy Reddy v. State of Andhra pradesh and Another: AIR 1962 SC 1788;***

(iii) ***D. Stephens v. Nosibolla: AIR 1951 SC 196.***

10. Mr Thakur submitted that the cruelty that is requisite under Section 498A IPC is clearly made out. He referred to the deposition of PW1 (Smt. Varsha Rani) where she has stated that sometime after the marriage, accused Chander Prakash started quarreling with Kavita on minor domestic issues and he also used to give her beatings. With reference to the other accused, PW1 has stated:-

> "All of them used to taunt my daughter for insufficient dowry and on the quality of goods given."

And further:-

> "My daughter used to tell me that all the accused used to give her beatings. I used to make my daughter understand and send her back to her matrimonial home. I had tried to make the accused understand with folded hands but they did not listen to me."

In examination-in-chief, Smt. Varsha Rani further stated:-

> "About 15 days before her death Chander Prakash and his brothers had given beatings to my daughter and she came to our house in a rickshaw when I saw that she was bleeding from her mouth and her lips were swollen. She came to our house at about 11.30 pm."

In the course of cross-examination also PW1 (Smt. Varsha Rani) had stated:-

> "Chander Prakash used to take liquor. There used to be some quarrel between Chander Prakash and Kavita on account of his taking liquor. There were also quarrel about some petty household matters. It is incorrect to suggest that none of the accused had given any beatings to the deceased or that Kavita had accidentally fallen from the roof top."

Referring to the deposition of PW2 Sh. Baldev Raj, Mr Thakur submitted that he had also made similar statements with regard to cruelty. In his examination-in-chief PW2 had, *inter alia*, stated:-

> "About 15 days before her death, my daughter Kavita had come to our house at about 11.30 pm because accused Gulshan Rani had quarrelled with them on some petty matter and all the four other accused persons ha mercilessly given beating to Kavita. I did not sent my daughter back. I along with my wife went to the house of Bua of Chander Prakash. She told us that she will make the accused understand, and on her asking, I sent my daughter back on the next day."

He continued his deposition as under:-

> "On the night of 3rd July 1993, accused had again given beatings to my daughter, and she had come to my house. She told me weeping that she had been given beatings by all the accused persons and the accused had also threatened to kill her."

PW3 Sh. Ashok Dandona, who is the uncle of the deceased Kavita stated in examination-in-chief as under:-

> "Kavita used to tell me on telephone and sometimes she used to talk to my wife on telephone and she used to complain that she was being given third-degree torture for brining less dowry. All the three brothers of Chander Prakash and his mother also used to join in this torture."

As regards the deceased Kavita's sister PW5 Amita, Mr Thakur submitted that she had been declared hostile by the prosecution. He surmised that possibly her change in attitude was because she subsequently got married to Chander Prakash. However, he submitted that there was sufficient material on the basis

of the evidence led by the prosecution to indicate that there was cruelty meted out by the accused.

11. Mr R. K. Naseem, the learned counsel appearing on behalf of the respondents, submitted that while deciding this revision petition, this Court must take into account three important features, which go to the root of the case. The first feature being that the accused have been subjected to a full-fledged trial and that the petitioner participated with full force in the said trial. The second feature is that the order of acquittal has been passed on merits after considering the entire evidence on record. The learned Additional Sessions Judge has, after examining the evidence placed before him by the prosecution, disbelieved the prosecution case. Thirdly, the State has chosen not to file any appeal against the order of acquittal. Mr Naseem submitted that the parameters of exercise of jurisdiction by the High Court under Sections 397/ 401 of the Code of Criminal Procedure, 1973 are well settled. Interference in acquittal cases is an extremely rare phenomenon. In any event, re-appreciation of evidence is not permissible in a revision petition. For this proposition, he placed reliance on the Supreme Court decision in the case of ***Thankappan Nadar & Others v. Gopala Krishnan & Another: 2002(4) Crimes 36 (SC)***.

12. Referring to paragraph 34 of the impugned judgment, Mr Naseem submitted that the Court came to the conclusion that there was no specific

demands for dowry mentioned in the initial statements made by Smt. Varsha Rani PW1 and Sh. Baldev Raj PW2 before the SDM . From those initial statements, it was only apparent that there was some dispute between the deceased Kavita and her husband Chander Prakash on domestic matters and that Chander Prakash used to beat Kavita sometimes under the influence of liquor. He submitted that as observed in the impugned order in paragraph 36 thereof, the allegations made by PW1 and PW2 in their statements before the Court were missing from their previously recorded true statements. In other words, Mr Naseem submitted, the learned Additional Sessions Judge regarded the statements made in Court as improvements upon the original truthful statements made by PW1 and PW2 before the SDM.

13. He further submitted that, with regard to the statements made by PW1 and PW2 before the SDM and the fact that such statements had been admitted to be true before the Court, this indicates that the disputes between Chander Prakash and Kavita were on account of petty domestic matters or because Chander Prakash used to beat her under the influence of liquor. The learned Additional Sessions Judge came to the conclusion that the disputes were not with regard to demand of dowry. It is on the basis of appreciation of the aforesaid evidence that the learned Additional Sessions Judge came to the conclusion:-

> "There is nothing on record to show that the accused had made demand of dowry and on that account, they forced Kavita to commit suicide."

Mr Naseem also submitted that it has come in evidence that the present petitioner Sh. Baldev Raj (PW2) was the eldest of four brothers. It is also true that PW2 Baldev Raj separated from the family and started living separately about 25 years back. The other three brothers which include PW3 Ashok Dandona resided together as a part of a joint family. Therefore, it is on the basis of this that the learned Additional Sessions Judge concluded in paragraph 38 of the impugned judgment that:-

> "Thus it has come on the record that Baldev Raj and his family were living separately from the rest of the brothers."

According to Mr Naseem, this is an extremely important circumstance inasmuch as PW3 was living separately and, therefore, would not be in the knowledge of the affairs of Kavita, who was the daughter of PW1 and PW2. Furthermore, Mr Naseem pointed out that the statements of PW3 have not been corroborated by PWs 1 and 2. The finding of the learned Additional Sessions Judge to this effect is in paragraph 39 of the impugned judgment which, *inter alia*, reads as under:-

> "Hence, the statement of PW3 as recorded in the office of the SDM cannot be given much importance. Moreover, it has come in the cross-examination of PW3 that he had told Shri Baldev Raj about the visits of Kavita to his house and her disclosure to him and his wife that accused persons used to beat her on account of demand of dowry. However, such facts are missing from the statements of PW1 and PW2. They have not told that PW3 ever told them about the

> alleged visits of Kavita to his house and disclosure of incriminating facts to PW3 and his wife. Hence, it is difficult to believe that Kavita would visit the house of PW3 to tell him the facts which she did not prefer to disclose to her mother and father. It is highly improbable particularly because the family of Baldev Raj was living separately from the rest of the brothers from the last 25 years. The prosecution cannot establish its case on the basis of the statements of PW3."

It is apparent that the learned Additional Sessions Judge did not give much credence, if at all, to the statements of PW3 made either before the SDM or before Court. Mr Naseem also referred to other findings recorded by the learned Additional Sessions Judge to indicate that the trial court considered the matter in detail and found that Section 498A IPC was not made out and that the question of Kavita being driven to commit suicide was also considered and therefore, it cannot be said that the trial court was unmindful of the provisions of Section 306 IPC. The findings are as under:-

> "45. From the discussion of the facts as observed in the earlier part of the order, I find that the prosecution has failed to establish that accused Chander Prakash and his family members caused cruelty or harassment to Kavita. As per the statements of PW1 and PW2, the dispute between the husband and the wife was on account of petty domestic matter or at the most, Chander Prakash used to beat her under the influence of liquor. There was no demand of dowry. Such allegations do not constitute the offence as described under Section 498A of the IPC. The alleged beating etc. was on small matters and it cannot be said that such allegation could have driven Kavita to commit suicide. The allegations of PW1 and PW2 that in the night of the incident, Chander Prakash and another accused persons had beaten Kavita are only their presumption. No evidence has been brought on record in that regard."

14. Replying to the submissions made with respect to the invocation of provisions of Section 306 IPC read with Section 113 A of the Indian Evidence Act, 1872, Mr Naseem said that the question of abetment and the raising of a presumption of abetment would only arise if it was established as a fact that Kavita had committed suicide. The question of whether she had committed suicide or not, cannot be determined conclusively and this the trial court had clearly observed in the operative portion of the order itself by stating that the exact cause of the unnatural death of Kavita had not come on record.

15. Mr Naseem also referred to Ex.PW12/B which are the brief facts in the inquest report prepared by the SDM, which indicate:-

> "..... One Smt. Kavita W/o Sh. Chander Prakash died due to alleged fall from roof top of her in-laws house at A-45, Pink Apartments, Paschim Vihar, Delhi"

He also referred to Ex.PW12/C which is the inquest form. Serial No.12 of the form carries the following question:-

> " In what manner or by what weapon or instrument such marks of injuries of violence appeared to have been committed?

As against this, the answer given is :-

> "Alleged fall from roof at the height of 47 feet app. and intercepted in between by telephone wire at a height of 15 feet app."

In the request for post mortem (Ex.PW12/D), *inter alia*, the following questions were also posed:-

> "(iii) Whether death is due to fall (this has been stated by the members of husband family)."
>
> "(v) If death is due to fall, then the height from which she fell down may be indicated."

PW18 (Dr. L. T. Ramani) (Dy. M. S. LNJP Hospital) stated in his deposition that:-

> "In my opinion, all injuries were ante-mortem caused by blunt force impact as a result of fall from height as alleged. Death was due to shock and haemorrhage consequent to injury."

Taking into account the aforesaid, Mr Naseem submitted that there is no concrete or specific proof that this was a case of suicide. Unless and until suicide is established, the provisions of Section 306 IPC do not come into play. For this proposition, Mr Naseem relied upon the decision of the Supreme Court in the case of ***Wazir Chand and Another v. State of Haryana: (1989) 1 SCC 244***.

16. It is contended by Mr Naseem that once the cause of death becomes uncertain and it cannot be said that Kavita committed suicide, the entire prosecution case shrinks down to one of domestic bickering and occasional beating by the husband after consuming liquor. He submitted that, therefore, the only point for consideration would be whether the case falls within Explanation (a) in Section 498A IPC. The said Explanation (a) makes it clear

that cruelty means any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. He submitted that Explanation (b) would not come into play as there is no demand for any property or valuable security. In the context of the provisions of Section 498A read in the light of Explanation (a) thereto, Mr Naseem submitted that the allegations as brought forth in the statements of PW1 and PW2, do not constitute an offence under Section 498A IPC. He referred to the decision of a learned Single Judge of the Bombay High Court in the case of ***Smt. Sarla Prabhakar Waghmare v. State of Maharashtra and others: 1990 CRL. L. J. 407***. He submitted that in this decision it was held that it was not every harassment or every type of cruelty that would attract Section 498A IPC. It must be established that the beating and harassment was with a view to force the woman to commit suicide or to fulfill illegal demands of the husband and in-laws. Therefore, according to Mr Naseem, even if the allegations of beating were taken to be true, it would not in itself amount to cruelty of the type mentioned in Section 498A IPC.

17. A reference was also made to a decision of a learned Single Judge of the Punjab and Haryana High Court in the case of ***Richhpal Kaur v. The State of Haryana and another: 1991(2) RCR 53 (P&H)***. In the said decision it was held that the motive for causing injuries to the wife was her refusal to help

her in-laws and her husband in effecting a compromise in some other criminal case. The beating and the act of cruelty was not with the intention to force the wife to bring more dowry and to meet any unlawful demand. Therefore, the Court came to the conclusion that the offence under Section 498A IPC was not made out. Concluding his arguments, Mr Naseem submitted that it is, therefore, clear that every instance of beating does not amount to an offence under Section 498A IPC. He submitted that since, admittedly, this was not a case of a dowry death under Section 304B IPC as there was no evidence of any demand for dowry, even Explanation (b) to Section 498A IPC could not be invoked. Explanation (a) to Section 498A IPC was also not attracted in the present case because the cruelty, if at all, was not of such a nature as was likely to drive Kavita to commit suicide or to cause grave injury or danger to her life, limb or health (whether mental or physical). It was, therefore, contended by him that Section 498A IPC was not at all attracted. Furthermore, Section 306 IPC as also Section 113-A of the Indian Evidence Act, 1872 also did not come into play, according to him, because the trial Court was of the clear view that the cause of death of Kavita was indeterminate. While it was an unnatural death, it could not be ascertained as to whether she had committed suicide or it was an accident. In the absence of a clear finding as a matter of fact that Kavita had committed suicide, there would be no question of invoking the proceedings of Section 113-A of the Indian Evidence Act, 1872 and Section 306 IPC.

18. Mr Thakur, in rejoinder, submitted that according to him the death of Kavita was a clear case of suicide. He submitted that at various portions of the evidence as also the Section 313 Cr. P. C. statement of Chander Prakash, it has come on record that Kavita had jumped. According to Mr Thakur, if this were to be the case then clearly Kavita committed suicide. He also submitted that PW2 Baldev Raj had stated in his deposition that Kavita was beaten up and was also threatened to be killed three days prior to her death. This, according to him, amounted to cruelty envisaged under Section 498A IPC. He referred to the decision of the Supreme Court in the case of ***Sabehrao and another v. State of Maharashtra: 2006 (2) JCC 871*** to buttress his submission that cruelty could even be mental torture and need not necessarily have physical manifestations.

19. I have set down in detail the arguments of the counsel for the parties to indicate clearly the extent of the interference called for by the petitioner and non-interference sought by the respondents. In order to arrive at a decision, firstly, it would be appropriate if the exact scope and width of a criminal revision petition on behalf of a private party against an order of acquittal is examined. Thereafter, I shall examine the decisions referred to by Mr Thakur in support of his contention that at least a case under Section 306 IPC read with Section 113-A of the Indian Evidence Act, 1872 and under Section 498A IPC was made out.

20. One of the earliest decisions of the Supreme Court with respect to the powers of revision of a High Court is that of ***D. Stephens*** *(supra)*. With reference to Section 439 of the Criminal Procedure Code of 1898 (which is similar to Section 401 of the 1973 Code) the Supreme Court observed as under:-

> "10. The revisional jurisdiction conferred on the H.C. under section 439, Criminal P. C., is not to be lightly exercised when it is invoked by a private complainant against an order of acquittal, against which the Govt. has a right of appeal under section 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower Ct. has taken a wrong view of the law or misappreciated the evidence on record."

This was followed by another decision of the Supreme Court in the case of ***K. Chinnaswamy Reddy*** *(supra)*, which is often cited as a leading case. The Supreme Court held as under:-

> " It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have though fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of S. 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself

> directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be : where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished of produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of S. 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles."

In ***Dhirendra Nath Mitra and Anr. v. Mukanda Lal Sen: AIR 1955 SC 584***, the Supreme Court cautioned:-

> "Now it may well be that a different view of this evidence could have been taken but that is not enough to justify interference in revision when there is an application by a private party to set aside an order of acquittal."

In ***Mahendra Pratap Singh v. Sarju Singh: (1968) 2 SCR 287***, the Supreme Court, following ***K. Chinnaswamy Reddy*** *(supra)* observed that an interference in revision with an order of acquittal can only take place if there is a glaring

defect of procedure in the instances as pointed out in ***K. Chinnaswamy Reddy*** *(supra)*. The Supreme Court also observed that although the list given in ***K. Chinnaswamy Reddy*** *(supra)* was not exhaustive of all the circumstances in which the High Court may interfere in an acquittal in a revision *"it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by this Court.*" In ***Ramu v. Jagannath: 1995 SCC (Cri) 181***, the Supreme Court reiterated that the revisional jurisdiction conferred on the High Court should not be lightly exercised particularly when it has been invoked upon a private complaint. In ***Vimal Singh*** *(supra)*, the Supreme Court observed that with regard to Section 401 of the Code of Criminal Procedure, 1973, the High Court does not exercise its revisional power ordinarily to interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The Supreme Court held:-

> "The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue have been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction."

The Supreme Court further cautioned against the reappreciation of evidence by the High Court in exercise of its revisional power by holding:-

> "In fact, the High Court has entered into the domain of reappreciation of evidence which it was not authorized to do in exercise of its revisional power."

The same views have been reiterated by various decisions of the Supreme Court from time to time. In ***Hydru v. State of Kerala:*** ***(2004) 13 SCC 374***, Supreme Court observed as under:-

> "It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate court. If upon reappreciation of evidence, two views are possible, it is not permissible even for the appellate court in appeal against acquittal to interfere with the same, much less in revision where the powers are much narrower."

The reference to the various decisions of the Supreme Court on the scope and ambit of powers of the High Court in exercise of its revisional jurisdiction under Section 401 of the Code of Criminal Procedure, 1973 clearly reveals that the powers are very limited. The revisional Court does not function as a court of appeal and cannot reappraise evidence. It cannot also interfere with an order of acquittal unless it is an exceptional case of some procedural irregularity or overlooking of material evidence or misreading of the same, which is manifest and which results in a flagrant miscarriage of justice. With these parameters in mind, let me now examine the decisions cited by Mr Thakur.

21. It is clear that the trial court has on appreciation of evidence held that there was no demand for dowry. That being the case, the question of Section 304B IPC does not arise at all. Moreover, invocation of Explanation (b) of Section 498A IPC also does not arise. The issue that remains to be considered is whether the trial court ought to have considered convicting the respondents under Section 306 IPC after raising the presumption under Section 113-A of the Indian Evidence Act, 1872. The question is also whether the trial court ought not to have found the respondents guilty under Section 498A IPC in the context of cruelty as explained in Explanation (a) thereof. The Supreme Court decision in ***Devinder Singh*** *(supra)* pertains to the offence under Section 304B IPC and since the finding has already been recorded that there was no dowry related demand in the present case, the said decision would not be of any relevance. In ***Shamnsaheb M. Multtani*** *(supra)*, the Supreme Court noted the difference in the legal position between the offence under Section 304-B and Section 306 IPC, which was earlier merely an offence of abetment of suicide. The Court observed that by the introduction of Section 113-A in the Evidence Act the said offence under Section 306 IPC had acquired wider dimensions and had become a serious marriage-related offence. According to the Supreme Court, Section 113-A of the Evidence Act provided that under certain conditions, almost similar to the conditions of dowry death, the Court "may presume" having regard to the circumstances of the case that such suicide had

been abetted by her husband. The Supreme Court observed that when the law provides that the Court "may presume" a fact, it was discretionary on the part of the court either to regard such fact as proved or not to do so and it depended upon all the other circumstances of the case. There was no compulsion on the Court to act on the presumption and, therefore, the accused could persuade the Court against drawing a presumption adverse to him. It must be pointed out that the case of ***Shamnsaheb M. Multtani*** *(supra)* was one under Section 304 B and not under Section 306 IPC. The reference to Section 306 IPC and Section 113-A of the Evidence Act was made to bring out the distinction between the presumption which has mandatorily to be drawn under Section 113-B of the Indian Evidence Act, 1872 in respect of an offence under Section 304 B IPC and the presumption that may, in the discretion of the Court, be drawn under Section 113 A of the Evidence Act in respect of an offence under Section 306 IPC. The said decision is limited to that and would, therefore, be of no help to the petitioner.

22. The next decision relied upon by Mr Thakur was that of ***K. Prema S. Rao****(supra)*. In that case, the charge had been framed for an offence under Section 304 B IPC and Section 498A IPC. However, the Supreme Court held that even though the charge had been framed under the aforesaid sections, if the evidence was sufficient, the husband could be convicted under Section 306 IPC for abetment of suicide of his wife. The Supreme Court held that the acquittal

of the husband of the offence under Section 304 B IPC was correct in the absence of any demand of dowry but the willful conduct of the husband forcing the wife to part with her *stridhan* and for that purpose concealing her postal mails was so cruel that she was driven to commit suicide and, therefore, a clear case of conviction under Section 306 IPC was made out. The Supreme Court also observed that mere omission on the part of the trial court to mention Section 306 IPC at the time of framing of charges did not preclude a court from convicting the accused for the said offence when found proved. It was in the alternate charge framed under Section 498A IPC, that it had been clearly mentioned that the accused subjected the deceased to such cruelty and harassment so as to drive her to commit suicide. The Supreme Court held that the provisions of Section 221 of the Code of Criminal Procedure of 1973 were sufficient to enable a criminal court to convict an accused for an offence with which he was not charged, although on facts found in the evidence, he could have been charged for such offences. The Court also held in the facts of the case that the omission to frame a charge under Section 306 IPC had not resulted in any failure of justice and, therefore, Section 215 of the Code of Criminal Procedure, 1973 permitted the trial to ignore any error committed at the time of framing of the charge.

23. There is no dispute with the aforesaid proposition. But it must be noted that the decision of the Supreme Court was rendered in the factual

backdrop of that case. There was a finding in that case that the cruel conduct of the husband led the wife to commit suicide. As noted in paragraph 19 of the said decision, the courts below had found the husband guilty of cruel treatment of his wife "and as a result the wife committed suicide within seven years of their marriage." It is on the basis of this finding that the Supreme Court held that on such evidence the presumption which arises under Section 113A of the Evidence Act was that the husband abetted the suicide. It is, therefore, clear that the decision of the Supreme Court in the case of ***K. Prema S. Rao****(supra)* was rendered on the basis of the findings: (a) the husband was guilty of cruel treatment of his wife and (b) as a result of which the wife committed suicide. In the present case, the question of Kavita committing suicide is indeterminate. The trial court has not returned a finding as to whether the unnatural death of Kavita was on account of her committing suicide or was an accident. It has not returned a definite finding not because it ignored or failed to return any such finding but because it found that there was not enough evidence on record to return a definite finding with regard to the cause of death. Therefore, in the absence of a definite conclusion that Kavita did commit suicide, the presumption under Section 113-A of the Evidence Act cannot be pressed into service nor can the provisions of Section 306 IPC be attracted. The decision in ***K. Prema S. Rao****(supra)* would, therefore, also not be of any assistance to the petitioner.

24. In ***Hira Lal*** *(supra),* which was also a decision of the Supreme Court relied upon by Mr Thakur, although the Court found that conviction under Section 304 B IPC could not be sustained, there was sufficient material to convict the accused in terms of Section 306 IPC along with Section 498A IPC. The Supreme Court had placed reliance on its earlier decision in the case of ***K. Prema S. Rao****(supra)* but that case, too, was a case of a clear cut suicide. Paragraph 3 of the said decision indicates that "One Sarita committed suicide by consuming poison on 14.04.1999." Therefore, just as the decision in ***K. Prema S. Rao****(supra)* was of no help to the petitioner, this decision in the case of ***Hira Lal*** *(supra)* would also not advance the petitioner's case. The cases of ***Gurbachan Singh*** *(supra)* and ***Naresh Kumar*** *(supra)* were also clear-cut cases of suicide and, therefore, the provisions of Section 306 IPC were held to apply. Those cases also do not help the case of the petitioner because, as rightly pointed out by Mr Naseem, unless and until it can be determined that Kavita committed suicide, the question of invoking Section 306 IPC or Section 113-A of the Indian Evidence Act, 1872 would not at all arise. For an offence under Section 306 IPC, as pointed out by the Supreme Court in the case of ***Wazir Chand (****supra), "before a person can be convicted of abetting the suicide of any other person, it must be established that such other person committed suicide."* Therefore, the commission of suicide is a pre-condition for invoking the offence of abetment of suicide or for raising the presumption under Section 113 A of the Evidence Act.

25. This leaves only the issue with regard to the applicability of Explanation (a) of Section 498-A IPC. The learned Additional Sessions Judge had, upon an examination of the entire evidence on record, come to the conclusion that the accused cannot be found guilty of having committed the offence under Section 498-A IPC. The learned Additional Sessions Judge noted all the circumstances including the circumstance of occasional beating being meted out by Chander Prakash to Kavita. Despite this, the learned Additional Sessions Judge has rejected the prosecution case. If this Court were to take a contrary view, it would amount to reappreciation of the evidence and that is not permissible as already indicated above.

26. Before parting with this decision, it must be pointed out that the circumstance that PW5 Amita, deceased Kavita's sister, married the accused Chander Prakash is also a very important circumstance in finding a key to this case. As observed in this judgment earlier, it is apparent that the trial court was greatly influenced by this fact. Although PW5 Amita was declared as a hostile witness, it does not mean that her entire testimony ought to be discarded if it otherwise has a ring of truth. The learned Additional Sessions Judge has recorded in the impugned judgment that in her cross-examination PW5 Amita had stated that her father (Baldev Raj) did not want to take action against the accused persons as he did not have any complaint against them but that he was

pressurized by his brothers to file a complaint. It was further stated that after PW2 Baldev Raj had made his initial statement before the SDM, his brothers obtained copies of the statements of both PW1 and PW2 and the same were taken along with PW5 to an advocate and the statements were shown. The advocate told them that on the basis of such statements action could not be taken against the in-laws of Kavita. PW5 Amita further stated that the advocate told them that unless there were allegations of harassment and beating on account of dowry, no case could be made out. She stated that she was pressurized to make a false statement before the SDM. The learned Additional Sessions Judge also noted that it must be kept in mind that PW5 Amita subsequently married Chander Prakash on 08.11.1994 during the pendency of the proceedings of the trial in the present case. In this context, the learned Additional Sessions Judge observed:-

> "If the accused persons would have caused harassment or cruelty to Kavita then it is difficult to believe that PW5 would have married with accused Chander Prakash."

This observation, I believe, sums up the entire thinking of the learned Additional Sessions Judge. I have already indicated that any interference with the impugned judgment would amount to a reappreciation of evidence. In any event, I have also indicated that the present case is not such an exceptional case as indicated by the various decisions of the Supreme Court where this Court would be within its powers under Section 401 of the Code of Criminal

Procedure, 1973 to interfere with an order of acquittal in a revision petition brought by a private party.

For the reasons given above, this revision petition is dismissed.

BADAR DURREZ AHMED
(JUDGE)

July 02, 2007
SR